wounded, both of them having been injured by shotgun pellets. The following day in a kampong some distance away the appellant was found by his uncle with the gun and 14 cartridges, three of which were by this time expended.

The appellant was arrested that day and the following day he made a voluntary statement before a Magistrate, the admissibility of which was not challenged at the trial. That statement as recorded by the Magistrate was to the effect that he had been unemployed for some time, that his family was hungry and that "I lost the balance of my mind." On the morning of the killing he took a gun and cartridges and went to the scene of his former labours where he saw a Chinese woman tapping. "I was then not of clear mind and so I shot her once. Then I ran away.....and I saw a Chinese man tapping and I fired a shot at him."

At the trial the appellant elected to give evidence on his own behalf. He admitted that he had made a voluntary statement to the Magistrate but he denied having said the things which have been quoted and he gave a version of what happened which briefly was to the effect that he had been out shooting wild boar and had shot the dead woman and the witness Loh by accident.

The learned Judge summed up the case to the jury at considerable length and with very great care. In our opinion, however, he failed to deal correctly with the statement alleged to have been made by the appellant shortly after his arrest. What he said was this:

"Accused denied making certain statements recorded in the confession. If you reject the evidence contained in the confession then you will have to be satisfied that the Magistrate was not telling the truth."

In our view this statement overlooks the fact that two entirely separate and distinct questions had to be considered in relation to the so-called confession. The first was whether in fact the appellant did say the things he was said to have said and the second was whether or not these things were true. On the first question there was probably little room for doubt, but it would be faulty ratiocination to come to the conclusion that because the appellant did in fact say these things these things were necessarily true, or to think that the statements made by the appellant in the so-called confession could only be disbelieved if the jury were satisfied that the Magistrate himself was not telling the truth as to what was said.

In our view the jury should have been told that if they were satisfied that the appellant did make the statement they should then consider whether it was true and that they should do so by considering it in the light of the rest of the prosecution evidence and in the light of the different story told by the appellant in the witness-box. As it was put by Sir John Beaumont in the case of *White v. The King*[1]:—

"The jury should have been cautioned that confessions are not always true, and that they must be checked, more particularly in a murder case, in the light of the whole of the evidence on the record in order to see if they carry conviction."

Had the jury been so directed they might well have come to the conclusion that the contents of the statement were true. They might well, although this may be more problematical, have thus been led to a conclusion unfavourable to the appellant. On these points, however, we were unable to form any definite opinion and were unwilling to speculate. In the circumstances we thought we had no option but to quash the conviction and order a re-trial.

Appeal allowed on 1st ground and Retrial ordered.

GOH CHENG SEE v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Rigby and Syed Sheh Barakbah JJ.) April 28, 1958]

[Penang — F.M. Criminal Appeal No. 53 of 1957]

Bankruptcy — Rash and hazardous speculation — Contracting debt "without having any reasonable ground of expectation of being able to pay" — Bankruptcy Ordinance (S.S. Cap.45), s.114(c) and (d).

These proceedings were commenced by Notice of Motion to the effect that the Court would be moved for an order that the appellant undergo imprisonment on the grounds that he had contravened section 114(c) of the Bankruptcy Ordinance by contracting ten specified debts provable in bankruptcy without having when he contracted them any reasonable ground of expectation of being able to pay them and that he had contravened section 114(d) by contributing to his bankruptcy by three speculative transactions in rubber futures of which full particulars were given and which were said to be rash speculations. The case came for hearing before Shepherd J., and he held that the appellant had contravened section 114(c) in respect of all but three specified debts and that he had contravened section 114(d) in respect of all the specified transactions, and sentenced him to three months' imprisonment in respect of the contravention of section 114(c) and three months' imprisonment in respect of the contravention of section 114(d), these sentences to run concurrently.

Against the whole of that decision the appellant appealed.

Held: (1) the evidence in this case, the truthful-

ness of which was not in question, suggests that a bank manager and an oil merchant, both of them familiar with the appellant's business had reasonable belief in his financial stability, and in the circumstances it would be extremely difficult to say that there should have been imputed to him a lack of reasonable grounds for expectation of his ability to pay in due course the debts incurred in the course of his business. The order for imprisonment, therefore could not stand and should be set aside;

(2) the losses incurred in rubber transactions were clearly those losses *pro tanto* to his bankruptcy and clearly in view of his financial position at the time and in view of the fact that such dealings in rubber had nothing to do with his normal business the transactions which led to these losses could only be described as rash speculations. The appeal insofar as it related to the learned trial Judge's decision under section 114(d) should be dismissed.

Re Fryer(2) distinguished.

Cases referred to:—

(1) *Poi Eng Lian v. The Official Assignee*, (1947) M.L.J. 126.

(2) *Re Fryer*, 10 L.T. (N.S.) 197.

COURT OF APPEAL.

C. O. Lim for the appellant.

H. S. Ong (Legal Adviser) for the respondent.

The judgment of the Court was delivered by —

Thomson C.J.: — This appeal arose from proceedings taken against the appellant under section 114 of the Straits Settlements Bankruptcy Ordinance, the relevant portions of which read as follows:—

"At any time after the public examination of the debtor a Judge may, if he thinks fit, order the bankrupt to undergo imprisonment of either description for a term which may extend to three months, if it appears to him that the bankrupt — .....

(c) has contracted any debt provable in bankruptcy without having any reasonable ground of expectation of being able to pay it; or

(d) has brought on or contributed to his bankruptcy by rash speculations or extravagance in living."

The appellant who carried on the business of an oil mill, was adjudged bankrupt and a Receiving Order was made in respect of his estate on 25th June, 1956. His statement of affairs which was filed on 13th August, 1956, showed liabilities amounting to $242,506 and assets of $35,911.

The public examination of the appellant was concluded on 5th November, 1956, and the present proceedings against him were commenced on 6th March, 1957.

These proceedings were commenced by Notice of Motion to the effect that the Court would be moved for an order that the appellant undergo imprisonment on the grounds that he had contravened section 114(c) of the Ordinance by contracting ten specified debts provable in bankruptcy without having when he contracted them any reasonable ground of expectation of being able to pay them and that he had contravened section 114(d) by contributing to his bankruptcy by three speculative transactions in rubber futures of which full particulars were given and which were said to be rash speculations. The case came on for hearing before Shepherd, J., and he held that the appellant had contravened section 114(c) in respect of all but three of the specified debts and that he had contravened section 114(d) in respect of all the specified transactions and sentenced him to three months' imprisonment in respect of the contravention of section 114(c) and three months' imprisonment in respect of the contravention of section 114(d), these sentences to run concurrently.

Against the whole of that decision the appellant appealed. On 13th February, 1958, we allowed the appeal against so much of the learned Judge's decision as related to section 114(c) but dismissed it insofar as it related to the learned Judge's decision under section 114(d).

As regards section 114(c) the principal ground of appeal was that in effect ten contraventions were alleged against the appellant, that these were dealt with together and that to have done so was wrong by reason of section 174 of the Criminal Procedure Code in force in Penang which provides in effect that no more than three criminal charges can be tried together. It was also said that at least some of the debts which were in question were not debts "provable in bankruptcy". For reasons which I am about to state we did not find it necessary to consider either of these grounds of appeal although our not doing so must not be taken as any sort of indication that we disagreed with the *dictum* of McElwaine, C.J., in the case of *Poi Eng Lian v. The Official Assignee, F.M.S.*(1) that "the Criminal Procedure Code has nothing to do with a case like the present."

In our opinion, which we express with respect, the learned trial Judge was unduly influenced by the view he took of the case of *Fryer*.(2) That was a case where a bankrupt who had no capital and with no experience in shipping goods to Australia, which in 1861 was a very long way from London in terms of time, obtained goods on credit and shipped them to Australia where they were ultimately sold at

very great loss. This was held to be rash and hazardous speculation within the meaning of section 159 of the Bankruptcy Act, 1861, rash and hazardous speculation being described as such as no reasonable man or no man of ordinary commercial prudence under similar circumstances would venture to embark in. It was further said that a trader who, within three months of his bankruptcy being, and of necessity knowing that he is, hopelessly insolvent, obtains goods on credit is guilty of contracting debts without any reasonable prospect of being able to pay for them, that is to say without the expectation which any reasonable man in such a position would entertain.

The evidence in the present case which consisted mainly of the appellant's own statements at his public examination in bankruptcy was far from being satisfactory. Nevertheless so far as it went (and we could take it no further) it showed a state of affairs very different from that in *Fryer's* case.

The appellant's business which had been in existence for several years was that of milling and selling coconut oil. Copra was bought and processed in a mill at Butterworth and from time to time when the mill could not cope with orders quantities of oil were bought from other sources. The oil manufactured in the mill or bought from outside was sold in tins under a "chop" which was said to enjoy a high reputation. Originally the business was carried on by the appellant in partnership with others. At some time, probably just before 1950, he bought out his partners and became the sole proprietor of the business.

The actual accounts of the firm were not in evidence but it would appear that at first substantial profits were made, no doubt in some measure as a result of high prices prevailing during the late war in Korea. Losses, however, appear to have been incurred in 1952 and 1953 and it was said that at the end of 1953 the appellant was insolvent to the extent of about $18,000, in the sense that at that time his liabilities exceeded his assets by that amount. He continued, however, to carry on business apparently at a loss until on 8th March, 1955, a disastrous fire occurred at his oil mill which destroyed buildings and machinery and large stocks of copra and oil. Considerable sums were ultimately recovered from Insurance Companies but this took time. The appellant's mill was for the time being out of action, his resources were inadequate to the strain imposed on them and about a year later he was forced into bankruptcy.

The ten debts which were relied on against him in relation to section 114(c) were all incurred in the period of six months before the fire, although some of them may well be acknowledgments of obligations incurred at earlier dates, and they amounted in all to about $117,000. Some $62,000 of this was for mill spare parts and copra bought for the purpose of the business. $55,000 was in respect of money borrowed for the purpose of the business and interest on it.

It is quite impossible on the evidence to say anything about the state of the appellant's affairs when each of these debts was incurred except that it is highly probable that on each of these debts his liabilities exceeded his assets. That, however, does not necessarily show that the appellant contracted these debts without having any reasonable ground of expectation of being able to pay them in the ordinary course of business and that it would be wrong to draw any such inference is clear from two pieces of evidence which were at no time contradicted. One was that the Chartered Bank allowed him from the beginning of 1952 until after the fire an overdraft which at one time rose to $162,000 for which they thought they were amply secured and about which they would seem to have felt no anxiety at any time although they were frequently visiting and inspecting his stock and premises. The other was that one Khandelwal, himself an oil miller and a creditor for $30,000, was anxious in 1954 to acquire an interest in the business, and the negotiations in this connection broke down not on the question of price to be paid for the interest to be acquired by Khandelwal but on the question of the subsequent division of the profits. This evidence, the truthfulness of which was not in question, to put it at the very lowest suggests that a Bank Manager and an oil merchant both of them familiar with the appellant's business had a reasonable belief in his financial stability and in the circumstances it would be extremely difficult to say that there should have been imputed to him a lack of reasonable grounds for expectation of his ability to pay in due course the debts incurred in the course of his business.

On these grounds we were of the opinion that the order for imprisonment under section 114(c) could not stand and should be set aside.

With regard to the allegations that the appellant had contributed to his bankruptcy by rash speculations the position was entirely different. As has been said since about 1952

down till the time of the fire which took place on 8th March, 1955, the appellant's liabilities consistently exceeded his assets. Again, as has been pointed out, his business was that of an oil miller. Yet on three occasions in February, 1955, he bought forward some seventy-five tons of rubber at prices which dropped from ten to sixteen cents a pound before the delivery date and he thereby incurred losses of some $14,000. Clearly those losses contributed *pro tanto* to his bankruptcy and clearly in view of his financial position at the time and in view of the fact that such dealings in rubber had nothing to do with his normal business the transactions which led to these losses could only be described as rash speculations.

Appeal allowed in part.

Solicitors: *Lim, Lim & Oon.*

THE NATIONAL UNION OF PLANTATION WORKERS v. K. ANNAMALAI

[C.A. (Thomson C.J., Smith and Shepherd JJ.) June 5, 1958]

[K.L. — F.M. Civil Appeal No. 11 of 1957]

Trade Union — Libel — Whether a trade union can be sued for libel — Trade Union Enactment, 1940, s.21 — Statutes — Construction of.

This appeal raised the question of the liability of a registered trade union to be sued for libel. The appellant, a registered trade union, was sued as the publisher and owner of a magazine entitled "Sangamani". The respondent was the Hon. Secretary of another trade union. It was alleged by the respondent that in the issue of the "Sangamani" dated June 1, 1956, there were published certain defamatory statements relating to the respondent. After some preliminary correspondence the respondent commenced proceedings in libel and cited as defendants the Editor of the "Sangamani" and the appellant union as "publishers and owners" of that periodical. The appellant thereupon took out a summons to have themselves struck out as defendants on the ground that the action against them was not competent by reason of section 21 of the Trade Unions Enactment, 1940. This application was dismissed by Sutherland J., and against that decision the appellant appealed.

Held: (Thomson C.J. and Smith J., Shepherd J. dissenting) a registered trade union in the Federation cannot be sued for libel.

Observations of Thomson C.J. on the trade union law in the Federation of Malaya.

Cases referred to:—

(1) *The Taff Vale Rly. Co. v. The Amalgamated Society of Rly. Servants,* (1901) A.C. 426.

(2) *Bonsor v. Musicians' Union,* (1956) A.C. 104.

(3) *Ideal Films Ltd. v. Richards,* (1927) 1 K.B. 374.

(4) *Citizens' Life Assn. Co. Ltd. v. Brown,* (1904) A.C. 423, 426.

(5) *Vacher & Sons Ltd. v. London Society of Compositors,* (1913) A.C. 107.

(6) *Rigby v. Connol,* 14 Ch.D. 489.

(7) *Linaker v. Pilcher,* 84 T.L.R. 421.

(8) *Osborne v. Amalgamated Society of Rly. Servants,* (1909) 1 Ch. 163, 193.

(9) *Casey v. Arnott,* 2 C.P.D. 24.

(10) *Agnew v. Usher,* 14 Q.B.D. 78.

(11) *Kaye v. Sutherland,* 20 Q.B.D. 147.

(12) *Tassell v. Hallen,* (1892) 1 Q.B. 321.

(13) *Attorney-General v. Sillem* (1863), 2 H. & C. 431, 515.

(14) *Cargo ex Argos,* (1873) L.R. 5 P.C. 134.

(15) *Shinwell v. National Sailors' & Firemen's Union,* (1913) *The Times,* June 16.

(16) *National Union of General & Municipal Workers v. Gillian & Ors.,* (1946) 1 K.B. 81.

(17) *Wigram v. Fryer,* (1887) 36 Ch.D. 99.

(18) *Vacher & Sons Ltd. v. London Society of Compositors,* (1912) 3 K.B. 547.

(19) *Longdon-Griffiths v. Smith,* (1950) 2 All E.R. 662.

(20) *Spenser's Case,* 5 Co. Rep. 16b.

(21) *Fleetwood v. Hull,* 23 Q.B.D. 33.

(22) *Willesford v. Watson,* (1873) 42 L.J. (N.S.) 447.

(23) *Drennan v. Beechey & Ors., Trustees of the Transport & General Workers' Union and Magill,* (1934) N.I. 74.

(24) *Dixon v. Bell,* (1816) 5 M. & S. 198.

(25) *Canada Sugar Refining Co. v. R.,* (1898) A.C. 735.

COURT OF APPEAL.

Miss P. G. Lim for the appellant.

K. L. Devaser for the respondent.

Cur. Adv. Vult.

Thomson C.J.: — This appeal raises the question of the liability of a registered trade union to be sued for libel.

The appellant is the National Union of Plantation Workers which I think is agreed to be a registered trade union and it is sued as the publisher and owner of a magazine entitled "Sangamani". The respondent is the Honorary Secretary of another body known as the Malayan Estate Workers' Union. It is alleged, and for the purposes of the present proceedings it must be assumed, that in the issue of the "Sangamani" dated 1st June, 1956, there were